

FILED 08 MAR 19 10:35 USDC-ORE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ROBERT NEWKIRK,

Petitioner,

Civil No. 06-1664-TC

v.

FINDINGS AND  
RECOMMENDATION

BRIAN BELLEQUE,

Respondent.

COFFIN, Magistrate Judge.

By Order (#29) entered March 3, 2008, petitioner was allowed 14 days to file a brief in support of his petition for habeas corpus relief under 28 U.S.C. § 2254 or to show cause in writing why respondent's unopposed Response [motion to dismiss] (#22) should not be allowed. Petitioner was advised that failure to comply with the court's order would result in

the dismissal of this proceeding.

Petitioner has not filed a brief in support of his petition or otherwise responded to the court's order to show cause.

Respondent's Response (#22) and Exhibits to Answer (#24) demonstrate that petitioner did not file his petition within the limitations period provided in 28 U.S.C. § 2244.

The AEDPA's limitations period may be equitably tolled if extraordinary circumstances beyond a prisoner's control made it impossible to file a petition on time. Miles v. Prunty, 187 F.3d 1104, 1107 (9<sup>th</sup> Cir. 1999). In order to establish entitlement to tolling of the § 2241(d)(1) limitations period, a petitioner must demonstrate that extraordinary circumstances beyond the prisoner's control made it impossible to file the petition on time. Allen v Lewis, 255 F.3d 798, 799 (9<sup>th</sup> Cir. 2001); see also, Green v. White, 223 F.3rd 1001, 1003 (9<sup>th</sup> Cir. 2000). Petitioner in this case has not established either circumstances.

Based on all of the foregoing, I find that petitioner's claim for habeas corpus relief is barred by the statute of limitations set forth in 28 U.S.C. § 2244(1). Petitioner's Petition (#2) should be denied. This proceeding should be

dismissed with prejudice.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have ten days from the date of service of a copy of this recommendation within which to file specific written objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issue and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 19<sup>th</sup> day of March, 2008.



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Thomas M. Coffin  
United States Magistrate Judge